



# Public Notice

U.S. Army Corps  
of Engineers  
Baltimore District

Date May 12, 2006

## Special Public Notice 06-27

**Subject:** Proposal to reissue with modifications, the Maryland State Programmatic General Permit (MDSPGP-2), for a five year period as the MDSPGP-3.

On October 1, 2001 the District Engineer for Baltimore District, issued the Maryland State Programmatic General Permit (MDSPGP-2) for a five year period. The MDSPGP-2 will expire on September 30, 2006, unless a decision is made to reissue it with modification, reissue without modification, suspend, or revoke it by or before that date.

The Corps has completed its midterm review and evaluation of the MDSPGP-2 and has released its findings and recommendations in the MDSPGP-2 Monitoring Report dated June 2005. The Report is available upon written request to the Baltimore District at the address listed below, or a copy may be obtained through the Corps web site at <http://www.nab.usace.army.mil/Regulatory/News/MDSPGP-2/FinalMid-PtMonitoringReport.pdf>

On May 7, 2002, the Baltimore District issued Special Public Notice #02-07 announcing suspension of specific Nationwide Permits (NWP) in Maryland that are duplicated by the MDSPGP-2. The proposed modified MDSPGP-3 is designed to continue to authorize certain activities formerly covered by the NWP program. Therefore, in conjunction with the reissuance of the MDSPGP-3 with modifications, we propose to suspend the following NWPs for use in Maryland, with the exception of the Chesapeake and Delaware Canal and adjacent waters regulated by Philadelphia District under a single and complete project and the Potomac River where adjacent wetlands are regulated as a single and complete project in West Virginia and Virginia. The NWPs in the District of Columbia continue to apply in accordance with the terms and conditions of Special Public Notice #02-07 dated May 7, 2002.

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance (except for repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire, or other discrete events)
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Maintenance
- NWP 8 – Oil and Gas Structures
- NWP 9 – Structures in Fleeting & Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 12 – Utility Line Activities
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water from Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 21 – Surface Coal Mining Activities
- NWP 24 – State Administered Section 404 Programs
- NWP 26 – (Reserved)
- NWP 28 – Modifications of Existing Marinas
- NWP 29 – Single Family Housing
- NWP 33 – Temporary Construction, Access & Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 39 – Residential, Commercial, & Institutional Developments

NWP 40 – Agricultural Activities  
 NWP 41 – Reshaping Existing Drainage Ditches  
 NWP 42 – Recreational Facilities  
 NWP 43 – Stormwater Management Facilities  
 NWP 44 – Mining Activities

Furthermore, we will reissue or not suspend the following NWPs in Maryland for the purpose of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public:

NWP 4 - Fish & Wildlife Harvesting, Enhancement & Attraction Devices and Activities  
 NWP 20 – Oil Spill Cleanup  
 NWP 22 – Removal of Vessels  
 NWP 23 – Approved Categorical Exclusions  
 NWP 25 – Structural Discharges  
 NWP 27 – Stream & Wetlands Restoration Activities  
 NWP 30 – Moist Soil Management for Wildlife  
 NWP 31 – Maintenance of Existing Flood Control Facilities  
 NWP 32 – Completed Enforcement Actions  
 NWP 37 – Emergency Watershed Protection & Rehabilitation  
 NWP 38 – Cleanup of Hazardous & Toxic Waste

On February 8, 2006, the Baltimore District issued Special Public Notice #06-02 requesting comments regarding operational procedures and issues relating to the use of programmatic general permits in Maryland for our consideration in the development of a new MDSPGP.

**The purpose of this 45-day Public Notice is to request comments on whether to reissue with modifications, or reissue without modifications for a five year period, or to not reissue the Maryland State Programmatic General Permit (MDSPGP-2). This notice is also to announce that a public hearing is scheduled for Wednesday, June 14, 2006 from 6:30 to 8:30 p.m. in the meeting room of the Annapolis Area Branch of the Anne Arundel County Public Library, 1410 West Street, Annapolis, Maryland 21401. Comments are requested by June 26, 2006.**

We are requesting comments on the following proposed modifications that would be incorporated into a new **Maryland State Programmatic General Permit-3 (MDSPGP-3)**, which can be viewed on our web page at <http://www.nab.usace.army.mil/Regulatory/Permit/MDSPGP-3.pdf>. A copy of the current version of the MDSPGP-2 dated October 1, 2001 can be viewed on our web page at <http://www.nab.usace.army.mil/Regulatory/Permit/MDSPGP-2.pdf>. The 2002 NWPs can be viewed on the U.S. Army Corps of Engineers Regulatory Home Page at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/2002nwps.pdf>.

### **PROPOSED MODIFICATIONS TO THE MDSPGP-3**

The substantive proposed modifications are to consolidate the number of existing Category I activities that are similar in nature; to consolidate duplicative activity-specific conditions and include them as a general condition applicable to all activities authorized under the MDSPGP-3; to eliminate the stacking prohibition (i.e., use of more than one MDSPGP Category I activity) for a single and complete project when the total impact acreage to waters of the United States authorized by the MDSPGP-3 does not exceed the acreage limit of the Category I activity with the highest specified acreage limit; to add three new Category I activities for dredging of previously authorized dredge areas, new minor dredging, and oyster aquaculture with appropriate conditioning to minimize effects to special aquatic sites and other aquatic resources; and to increase Category I activity impact limits to reduce overlap of State and Federal review processes that result in the same decision on these minimal projects.

The Baltimore District is also considering improvements to Category I and Category III processes, including early coordination with the resource agencies on specific types of actions that affect resources and habitats of interest. The public will continue to see the same number of public notices from MDE. The specific proposed modifications are as follows:

1. Paragraph 2, page 2: A paragraph will be added to discuss minimal effects, purpose and cooperative effort with MDE.

2. I.A.6, page 3, Federal Authorities: Section 404(c) of the CWA authority will be added.
3. II.A, page 3, Applicability: A paragraph to define “impacts to Waters of the United States” will be added. Secondary impact areas will now include *excavated* areas, in addition to permanent flooding or drainage because of the regulated activity. This agrees with the NWP. In addition, clarification will be added that ephemeral waters are not included in the acreage or linear foot measurements of impacts to waters of the United States or impacts to stream channels for the purpose of determining compliance with the limits of the MDSPGP-3.
4. II.B, pages 3 through 4, Activities Authorized by the MDSPGP-3: Clarified verification requirements.
5. II.C.1-7, page 4, Activities Not Authorized by the MDSPGP-3: Reordered activities.
6. III.B.2.a, page 6, Category II Procedures: Provides a reference to a Federal Navigation Channel Map located in the Appendix.
7. III.B.2.c, page 6, Category II Procedures: Added that an application will be required for Category I activities proposing permanent impacts of 200 linear feet or greater to perennial and intermittent stream channels.
8. III.B.3, pages 7 through 8, Category III Procedures: The Baltimore District proposes one Category III process which will include an early coordination process with Federal and State resource agencies for all Category III projects. The resource agency notification timeframe is proposed to change from a 30-day comment period to a 15-day comment period. Early coordination of Category III projects with the resource agencies will serve to improve effective interagency coordination, expedite comments, and foster professional partnerships and cooperative working relationships. MDE will continue to provide an updated listing of all applications received on their website for public information and will also continue to issue a State public notice to the resource agencies, the Corps, and the public when a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required.
9. IV.A, pages 9 through 10, MDSPGP-3 Category List Index: The Category List will be reorganized and consolidated such that more frequently used activities are located in the beginning of the list. Category I will consist of eight activity types (Boating and Navigation Activities; Repair and Maintenance Activities; Underground and Overhead Utility Lines; Road Crossings; Fill Activities; Shoreline/Bank Stabilization Activities; Return Water; and Aquaculture). Three new activities have been added (Maintenance Dredging of Previously Authorized Dredge Areas; New Minor Dredging; and Aquaculture). Several Category I activities will be eliminated (Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities; Oil Spill Cleanup; Removal of Vessels; Structural Discharges; and Cleanup of Hazardous and Toxic Waste). These types of activities will be authorized with NWPs (# 4, 20, 22, 25 & 38), when applicable. An addition to Category II coordination procedures will include Activities Proposing 200 Linear Feet or More of Perennial and Intermittent Stream Impact. Category III will be a single activity.
10. IV.B.1, pages 10 through 33, MDSPGP-3 Category List, Category I Activities: To avoid repetition, repeated activity-specific conditions (e.g., single and complete project; in-stream work being conducted “in-the-dry”; restoration of temporary impacts; aquatic life movements; and low flow channel being constructed through in-stream armoring, etc.) will be consolidated into the general condition list. However, other activity-specific conditions and clarifications have been added to Category I activities, as appropriate. Furthermore, the impact limits for Category I activities will increase from 5,000 square feet to ½ acre (21,780 square feet ) or 1.0 acre (43,560 square feet) as identified in each Category I activity’s impact limits.
11. IV.B.1.a.4, page 12, Marina/Community Pier Reconfiguration: Added community piers to this activity.
12. IV.B.1.a.5, page 13, Boat Ramp Construction, Repair and Expansion: Eliminated the 50 cubic yard restriction from the impact limits and activity-specific conditions.
13. IV.B.1.a.9, page 14, Maintenance Dredging of Previously Authorized Dredge Areas: This activity is proposed to be added to Category I activities.

14. IV.B.1.a.10, page 15, New Minor Dredging: This activity is proposed to be added to Category I activities.
15. IV.B.1.b.1, pages 15 through 17, Repair and Maintenance Activities, General Maintenance: The impact limit for this activity is proposed to increase from 5,000 square feet to 1.0 acre (43,560 square feet) of waters of the United States. The linear foot limit for sediment removal is proposed to increase from 50 feet to 200 feet in any direction from the structure. Reworded activity-specific condition to read, "For replacement culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations" to allow for exceptions in varying environmental conditions such as bedrock streambeds. The activity-specific condition prohibiting stationing equipment in nontidal streams will now be addressed with a general condition requiring that in-stream work be conducted "in-the-dry" whenever practicable. Added an activity-specific condition to read, "This activity does not authorize access roads proposed as part of utility maintenance".
16. IV.B.1.b.2, page 17, Repair and Maintenance Activities, Armoring Bridges, Causeways and Culverts: The impact limit for this activity is proposed to increase from 5,000 square feet to 1.0 acre (43,560 square feet) of waters of the United States. Reworded activity description and activity-specific condition to revise the distance limit on discharges upstream and downstream from the existing structure to require that the armoring be the minimum necessary to protect the structure or to ensure the safety of the structure. Clarification added that this activity does not authorize stream channelization or stream relocation projects. The activity-specific condition prohibiting stationing equipment in nontidal streams will now be addressed by a general condition requiring that in-stream work be conducted "in-the-dry" whenever practicable.
17. IV.B.1.b.3-5, pages 17 through 19, Repair and Maintenance Activities, Bulkhead Repair or Replacement; Maintenance of Tidal Roadside Ditches; and Maintenance of Mosquito Control Ditches: The impact limit to the activity-specific applicable waters of the United States for these activities is proposed to increase from 5,000 square feet to 1.0 acre (43,560 square feet). The activity-specific condition prohibiting stationing equipment in nontidal streams will now be addressed with a general condition requiring that in-stream work be conducted "in-the-dry" whenever practicable.
18. IV.B.1.c, pages 20 through 21, Underground and Overhead Utility Lines: The impact limit to waters of the United States for this activity is proposed to increase from 0.25 acre (10,890 square feet) to 0.5 acre (21,780 square feet). Restrictions on utility line diameters will be eliminated. Work associated with a driveway crossing for a single residential lot will no longer be included as part of this activity since the use of multiple Category I activities is proposed with this MDSPGP modification. The activity-specific condition restricting the use of this activity when the crossing is in the location of a braided channel nontidal system will be removed. This activity will provide for the utility line and associated access road to be constructed parallel to a stream corridor with an associated undisturbed buffer. Reworded activity-specific condition to read, "For permanent culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations" to allow for use of this activity in varying environmental conditions such as bedrock streambeds. The activity-specific condition for specific flow velocity requirements through permanent culverted crossings will now be addressed in a general condition regarding Aquatic Life Movements. Several repeated activity specific conditions related to temporary and permanent water crossings are now addressed in a general condition for Water Crossings for all activities authorized under the MDSPGP-3.
19. IV.B.1.d., pages 21 through 22, Road Crossings: The impact limit to waters of the United States for this activity is proposed to increase from 5,000 square feet and 200 linear feet to 0.5 acre (21,780 square feet) and 500 linear feet with no single crossing to exceed 200 linear feet of impact. Clarification that written documentation may be required to support the preferred crossing method is included. Reworded activity-specific condition to read, "For permanent culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations" to allow for use of this activity in varying environmental conditions such as bedrock streambeds. The activity-specific condition for specific flow velocity requirements through permanent culverted crossings will now be addressed in a general condition regarding Aquatic Life Movements. Several repeated activity specific conditions related to temporary and permanent water crossings are now addressed in a general condition for Water Crossings for all activities authorized under the MDSPGP-3.

20. IV.B.1.e.1, pages 22 through 23, Minor Nontidal Fills: Section 10 nontidal navigable waters of the United States (e.g., Potomac and Susquehanna Rivers) have been added to the statutory authority for this Category I activity. The impact limit to nontidal wetlands and streams for this activity is proposed to change from 5,000 square feet and 500 linear feet to 0.5 acre (21,780 square feet) and 300 linear feet. Activity-specific conditions restricting the use of this activity for channelization or placement of pipe and the construction of golf courses or ski areas will be removed. Clarification will be added to say that this activity does not authorize the construction of in-stream stormwater management facilities.
21. IV.B.1.e.2, pages 23 through 24, Agricultural Activities: Consolidated three previous Category I Agricultural Activities (i.e., Agricultural Production Improvement, Building Construction, and Tide Gates) into one Category I activity. The impact limit to waters of the United States for this activity is proposed to increase from 5,000 square feet to 0.5 acre (21,780 square feet). Clarification is added to require a compensatory mitigation proposal for non-USDA program participants as well as USDA program participants.
22. IV.B.1.e.3, pages 24 through 25, Soil Investigations, Scientific Measurement Devices, and Survey Activities: Consolidated two previous Category I activities (i.e., Soil Investigations and Survey Activities and Scientific Measurement Devices) into one Category I activity. No application will be required for Corps authorization. The impact limit to waters of the United States for this activity is proposed to increase from 5,000 square feet to 0.5 acre (21,780 square feet). Several repeated activity specific conditions related to temporary and permanent water crossings are now addressed in a general condition for Water Crossings for all activities authorized under the MDSPGP-3.
23. IV.B.1.e.4, pages 25 through 26, Dry Fire Hydrants: The impact limit to waters of the United States for this activity is proposed to increase from 5,000 square feet to 0.5 acre (21,780 square feet).
24. IV.B.1.e.5, page 26, Clearing Debris and Windfalls: The impact limit to waters of the United States for this activity is proposed to increase from 5,000 square feet to 0.5 acre (21,780 square feet). No application will be required for Corps authorization.
25. IV.B.1.e.6, page 26 through 27, Special Area Management Plan (SAMP) Study Area Projects: The impact limit to waters of the United States for this activity is proposed to change from 5,000 square feet to those areas determined to be eligible for impacts under a SAMP document not to exceed one acre. The activity-specific condition for specific flow velocity requirements through permanent culverted crossings will now be addressed in a general condition regarding Aquatic Life Movements.
26. IV.B.1.e.7, pages 27 through 28, Temporary Construction, Access, Stream Diversions, and Dewatering for Construction: Section 10 statutory authority is proposed to be added to this activity. The activity description now includes temporary construction, access, and dewatering work necessary for construction activities or repair, or access fills, or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps or the United States Coast Guard (USCG), or for other construction activities not subject to the Corps or USCG regulations. The impact limit to waters of the United States for this activity is proposed to change from 5,000 square feet to 0.5 acre (21,780 square feet). An application will be required to be submitted to MDE for Corps authorization. The activity-specific condition for aquatic life movement will now be addressed in a general condition regarding Aquatic Life Movements. An activity-specific condition will be added to require that a restoration plan be included with the application.
27. IV.B.1.e.8, page 28, Outfall Structures: The impact limit to waters of the United States for this activity is proposed to change from 800 square feet to 0.5 acre (21,780 square feet). The activity-specific condition that provides clarification that the activity is limited to the construction of intake structures directly associated with an authorized outfall structure was removed since this is already included in the activity description. The activity-specific condition for aquatic life movement will now be addressed in a general condition regarding Aquatic Life Movements.
28. IV.B.1.f, page 28, Shoreline and Stream Bank Stabilization Activities: Provide clarification regarding the order of preference for shoreline stabilization activities and stream bank stabilization activities and identified that written documentation may be required to support the preferred stabilization method.

29. IV.B.1.f.1, pages 28 through 30, Bank Stabilization, Revetments, Tidal Shoreline Erosion Control Structures (not revetments), Existing Revetment/Bulkhead Armoring: Consolidated four previous Category I activities (i.e., Revetment/Bulkhead Armoring, New Revetments, Tidal Shoreline Erosion Control Structures (not revetments), and Nontidal Bank Stabilization) into one Category I activity. The impact limit to waters of the United States for this activity is proposed to change to 0.5 acre (21,780 square feet) and 500 linear feet. This activity allows for in-stream bed structures (e.g., rock cross vanes, j-hooks, vortex rock weirs, etc.) that are constructed for bank stabilization purposes.
30. IV.B.1.f.2, pages 30 through 31, Tidal Marsh Creation/Beach Nourishment: Added beach nourishment to this activity. The impact limit to waters of the United States for this activity is proposed to change from 17,500 square feet to 1.0 acre (43,560 square feet).
31. IV.B.1.g, page 31, Return Water: This activity will not require an application for Corps authorization.
32. IV.B.1.h, pages 31 through 33, Oyster Aquaculture: This activity is proposed to be added to Category I activities.
33. IV.B.2.b, page 33, Category II Activities, Activities Proposing 200 Linear Feet or More of Perennial and Intermittent Stream: This activity is proposed to be added to the Category II agency coordination process.
34. IV.B.3, page 34, Category III Activities: One Category III activity is proposed that will include an early coordination process with Federal and State resource agencies for all Category III projects. See item #7 above for further clarification of this proposed change.
35. IV.B.4, pages 34 through 36, Definitions: Changed reference to new NWP as appropriate.
36. VI.A.6, page 37, Use of Multiple MDSPGP-3 Category I activities: Renamed and changed this general condition to allow the use of more than one MDSPGP Category I activity for a single and complete project so long as the total impact acreage to waters of the United States authorized under the MDSPGP-3 Category I does not exceed the acreage limit of the Category I activity with the highest specified acreage limit. An example is provided for further clarification.
37. VI.C.2.b, page 39, Mitigation: Added condition requiring compensatory stream mitigation for all permanent impacts of 200 linear feet or greater to perennial and intermittent stream channels. Added that an application must include a compensatory mitigation proposal to offset permanent impacts of 200 linear feet or greater to perennial and intermittent stream channels.
38. VI.C.6, page 39, Aquatic Life Movements: Added a condition for aquatic life movements.
39. VI.C.7, pages 39 through 40, Water Crossings: Consolidated and included several activity-specific conditions related to temporary and permanent water crossings.
40. VI.C.9, page 40, Spawning Areas: Reworded and updated this language.
41. VI.D.2, pages 40 through 41, Procedural Conditions, Compliance Certification: Added a timeframe of one month to provide the required Compliance Certification Form and language that a non-compliance/enforcement action may be taken against the permit holder.
42. VII.D, page 43, Reporting and Evaluation: Added language to include a requirement for review of operational issues by the Corps in consultation with MDE and the resource agencies and that the Corps will conduct a review prior to the expiration of the MDSPGP-3 for consideration in the reevaluation of the MDSPGP-3 for reissuance.

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a State-wide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. If the MDSPGP-2 is

reissued as MDSPGP-3, the Baltimore District Engineer will reevaluate the MDSPGP-3 within five years to determine if activities have been authorized in accordance with the requirements of the MDSPGP-3.

The decision whether to reissue the MDSPGP-2 as MDSPGP-3, with or without modifications, will be based on an evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-3 on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

**Regulatory Flexibility Act (RFA) Certification:** When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. §. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Although, the MDSPGP-3, as proposed, may not constitute a rule within the meaning of the RFA, the Corps of Engineers, Baltimore District has performed an analysis pursuant to Sections 404(e) (1) and (2) of the Clean Water Act on whether the proposal has the potential to affect all small business investment companies (SBICs) within the State of Maryland. Baltimore District has determined that this proposal can potentially have an impact on a substantial number of small entities within the State. However, the Baltimore District has further determined that the impact on entities affected by the proposal will not be significant. The effect of the MDSPGP-3 as proposed would be to allow small businesses, small organizations and small governmental jurisdictions to apply for only one joint Federal-State permit, when proposing to impact waters of the United States with the discharge of dredged or fill material, as opposed to applying for separate permits from the MDE (State permit) and the Corps (Federal permit). Thus, the Baltimore District expects the impact of the proposal will be a reduction in the paperwork burden and in potential delays for small businesses, small organizations and small governmental jurisdictions. The Baltimore District asserts that the economic impact of the reduction in paperwork will be minimal and entirely beneficial to small businesses, small organizations and small governmental jurisdictions. Accordingly, the Baltimore District hereby concludes that the MDSPGP-3, as proposed, will not have a significant economic impact on a substantial number of small entities. The Baltimore District invites comment from members of the public who believe there will be a significant impact either on small businesses, small organizations and small governmental jurisdictions, or on companies that receive funding from small businesses, small organizations and small governmental jurisdictions.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed MDSPGP-3. Any comments received will be considered by the Corps of Engineers to determine whether to reissue with modifications, reissue without modifications, or not reissue the MDSPGP. To make this decision, comments are used to assess impacts on endangered species, cultural resources, essential fish habitat (EFH), water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments will also be used to determine the overall public interest of the proposed activity.

**A public hearing has been scheduled for Wednesday, June 14, 2006 from 6:30 to 8:30 p.m. The hearing will be held in the meeting room of the Annapolis Area Branch of the Anne Arundel County Public Library, 1410 West Street, Annapolis, Maryland 21401. The purpose of the public hearing is for the Baltimore District to receive oral or written comments that will enable us to evaluate the impacts of the proposed modified MDSPGP-3 on the public interest. All interested parties, including representatives of Federal, State, and local governments and private individuals and organizations, are invited to be present or to be represented. Each will be given an opportunity to express their views regarding the proposed modified MDSPGP-3. Each person wishing to make an oral statement is asked to complete a speaker's card as he or she enters the auditorium. To be included in the official record, written comments and information provided by interested parties must be received by the Baltimore District by June 26, 2006.**

Written comments concerning the proposal described above related to the factors listed above or other pertinent factors must be received by the District Engineer, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified above to receive consideration. The 401 certifying agency has a statutory limit of one year to make its decision,

Coastal Zone Consistency Certification is required in accordance with the Maryland Coastal Zone Program. The Baltimore District has certified that the proposed activity complies with and will be conducted in a manner consistent with the Maryland Coastal Zone Program. This certification statement is available for inspection in the District Office; however public comments relating to consistency must be received by the Coastal Zone Division, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708, within the comment period specified above. It should be noted that the Coastal Zone Division has a statutory limit of 6 months in which to make its consistency determination.


A preliminary review of the MDSPGP-3 indicates that processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. Similarly, a preliminary review of the proposed MDSPGP-3 indicates that it complies with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended. The Baltimore District has determined that the adverse effects of this MDSPGP-3 on EFH for Federally managed species would not be substantial and an expanded consultation will be conducted with NMFS. A detailed written EFH assessment will be submitted to NMFS. No mitigative measures are recommended to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise and would change the preliminary determination.

Finally, the proposed modified MDSPGP-3 is conditioned to assure that on a case by case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein will be given the consideration required by Section 106 of the National Historic Preservation Act. As the evaluation of the proposed modified MDSPGP-3 continues, additional information may become available which could modify this preliminary determination.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Questions and comments may be directed to Ms. Beth Bachur, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203. A copy of the proposed MDSPGP-3 is attached. Comments are requested by June 26, 2006.

FOR AND IN BEHALF OF THE DISTRICT ENGINEER: COLONEL ROBERT J. DAVIS

  
FOR JANET M. VINE  
Chief, Regulatory Branch